



## 10.0 PREPARATION OF NOTICE OF DEFICIENCY

Due to the complex nature of state and federal hazardous waste regulations and the level of technical detail and interpretation required in a hazardous waste facility permit, almost all permit applications will have deficiencies. Deficiencies may be found during the permit writer's preliminary review, corrective action research, site visit, Phase I Technical Review, and from reviews performed by other reviewers. Deficiencies may be the result of information that is missing, inadequate, insufficient, or from general regulatory concerns about the overall operation of the facility. The information in the application must be sufficient to address all legal, CEQA, and regulatory requirements, plus concerns DTSC may have to minimize any health or safety risk to the public and the environment.

### The Notice of Deficiency

The applicant is informed about application deficiencies through a formal DTSC Notice of Deficiency (NOD), which details each deficiency found in the application and gives instruction to the applicant on how the deficiency can be remedied. The applicant is expected to respond to the NOD and correct all noted deficiencies within a specified time period, usually 30 calendar days from the date of the NOD. The permit may be denied if the applicant fails to adequately respond to each deficiency noted. The permit writer has the responsibility to ensure that the NOD adequately communicates the nature of the deficiency and the response that is required to satisfy the concerns of DTSC.

### Only One NOD Allowed

It is desired practice to allow only one NOD. If the facility's response to the NOD is severely deficient, DTSC may choose to deny the requested permit. Modest deficiencies should be addressed through permit conditions rather than a second (or even a third) round of NODs.

### Assemble and Organize Materials

Before beginning to assemble the NOD, the permit writer must have completed the Phase I Technical Review Checklist (with sufficient notes to justify findings), collected and reviewed comments and checklists from any other reviewers, completed the CEQA Initial Study, completed a preliminary draft of the RFA report, and have a thorough knowledge of the proposed facility and operational practices. The permit writer must also assemble a mailing list of (this is not the same list for Public Notice purposes) everyone that will be mailed a copy of the NOD, noting who on this list is the "official applicant." The official applicant must be sent the original signed copy of the NOD via certified mail. All others are sent copies of the original NOD and a "cc" of the original NOD transmittal letter.

### Assembly of the NOD

The NOD process is straightforward. After completing all elements of the Phase I Technical Review and assembling all completed checklists, inspection reports, photos, personal notes, and the other items listed above, the permit writer simply creates an item-by-item list of problems, discrepancies, and deficiencies found during the review. These comments should be organized consistent with the DTSC checklist used, but should also note where in the application the permit writer found the deficiency.

A typical NOD consists of three parts: a cover or transmittal letter, general comments, and specific comments. The cover letter explains the purpose and format of the accompanying NOD and instructs the applicant how to submit the required response. The general comments section of the NOD lists or explains deficiencies that are either too broad to be covered by a specific NOD statement or reflects a collection of a whole group of specific statements. Although general comments do not require specific responses, the facility's resubmittal must respond to the issues raised. The main body of the NOD will be the specific statements. As described above, these statements and a suggested transmittal letter

can be generated from the Permit Module into a WordPerfect® file, which can be edited to tailor the statements and letter to the facility. The general comments and any specific deficiencies related to the CEQA review, RFA, site visits, or additional regulatory concerns would be added to the NOD during this editing process.

### The Facility Response to the NOD

In the past, facilities have responded to NODs with a ragged assortment of supplemental material, insert sheets, addendum, FAX pages, telephone calls, and referrals to documents on file with DTSC or other agencies. The Permit Module draft transmittal letter requires the applicant to submit a new, complete application with all NOD responses "seamlessly" inserted into the new document. The applicant must also provide a cross reference between the old and new applications showing where changes were made in response to DTSC's deficiency notice. If more than 30 days are needed to prepare a high quality revised application, the permit writer may negotiate a resubmittal date, provided the delay will not result in subsequent delays in meeting annual workplan and RCRIS deadlines.

## KEY QUESTIONS

Does the application contain any false statements or misrepresentations which should be referred to the Statewide Compliance Division (SCD) for civil or criminal action?

What deficiencies should be considered fatal flaws, which, if not corrected, should lead to the denial of the requested permit?

Have the following documents been completed: Phase I Technical Review Checklist, preliminary draft of RFA report, CEQA Initial Study and Environmental Checklist, site visit report, all comments and checklists from any additional reviewers, and up-to-date mailing list for the NOD document with official "applicant" noted.

Are CEQA Initial Study and Environmental Checklist concerns addressed in the permit application? If not, does the final NOD include all CEQA deficiencies?

Does the contents of the permit application adequately correspond to observations or assessments of the facility made during site visits? Does the Final NOD include all discrepancies found during site visits?

Does the permit application adequately reflect all corrective action requirements? Does the Final NOD include all discrepancies concerning corrective action?

Have all comments from additional reviewers been reviewed and agreed to? Have all discrepancies found by additional reviewers been included in the Final NOD?

Has the Final NOD been spell and grammar checked?

Does each general and specific NOD statement adequately describe the location(s) of the deficiency in the permit application, the nature of the deficiency, and the appropriate response DTSC expects? Without further prompting from DTSC, can the applicant be expected to fully understand each NOD statement?

Has the original signed NOD been sent to the official applicant via certified mail? Are there others that should receive a copy of the NOD document via certified mail?

Have copies of all above mentioned documents and readable copy of the NOD been properly placed in the DTSC administrative file for the facility?

## REQUIRED OUTPUTS

Completed Phase I Technical Review checklist, annotated with permit writer comments.

Completed CEQA Initial Study

Preliminary draft of RFA report.

Completed inspection reports and photo paste-up reflecting any site inspections made either before or during the technical review.

Preparation of a standardized NOD, with supplemental statements and general comments, as needed.

Original NOD and transmittal letter to official applicant, with copies sent to everyone on the NOD mailing list.

Formal referral to SCD if necessary.

Copies of all documents placed in the DTSC administrative file.

## APPLICABLE REGULATIONS AND STATUTES

### State Laws and Regulations:

#### Title 22, Cal. H&S Code

##### Sections

25200.8	Requires applicant's timely response to NOD.
25186	Authority to deny a permit for causes listed.
25186.1	Requires DTSC to conduct denial proceedings in accordance with specified Government Code provisions.
25187	Authority to issue an order against an applicant for not responding to a NOD
25189	Authority to seek civil penalties for making false statements or misrepresentations in application for a permit.
25189.2	Authority to seek civil penalties for making false statements or misrepresentations in application for a permit.
25191	Authority to seek criminal penalties for making false statements or misrepresentations in an application for a permit.
25199.6	Requires DTSC to determine completeness within 60 days from date of application receipt.
25200.8	Requires the applicant to respond to a NOD no later than the date (or alternative date) specified by DTSC.
<u>25200.8</u>	Also authorizes the initiation of enforcement action against non-responsive applicants.

#### Title 22, Cal. Code of Regs.

##### Sections

66270.10(e)(3)	Specifies that failure to submit full Part B information is grounds for termination of interim status.
66271.2(c)(1)	Requires DTSC to complete its completeness (Phase I Technical Review) determination and notify the applicant in writing (NOD) of its finding
(c)(2)	Requires DTSC's notice (NOD) to specify those parts of the application which are incomplete and indicate the manner in which they can be made complete, including a

- list and specific information needed to complete the application.
- (c)(2) Also requires the applicant to submit to DTSC the materials necessary to make the application complete.
- (c)(2) Also requires that DTSC make a completeness determination on the materials submitted in response to a NOD within 60 calendar days from the date of receipt.
- (c)(4) Stipulates that an application is deemed complete when DTSC notifies the applicant in writing that the application is complete.
- (c)(6) Stipulates that after DTSC determines the application to be complete, it can only ask for information to clarify, supplement, or modify previously submitted material.
- (d) Specifies that DTSC may deny a permit for cause specified in Cal. H&S Code section 25186.
- (e) Specifies DTSC options if an applicant fails or refuses to correct deficiencies in the application (permit denial and/or enforcement action).

#### Federal Laws and Regulations:

#### Other Laws and Regulations:

### POLICIES

#### DTSC Policies:

Current DTSC policy is to issue only one NOD. If the deficiencies are not corrected by the deadlines (set by the department), DTSC may either initiate denial proceedings or condition the permit to address outstanding deficiencies.

OPP #87-15, Permit Denial Procedures. This procedure provides a step-by-step outline of the permit denial process and a description of activities involved in completing each step.

#### EPA Policies

#### Other Policies:

### INSTRUCTIONS TO APPLICANTS

#### Handouts to be Given to Applicants:

#### Examples to be Given to Applicants:

### CEQA CONSIDERATIONS

### LEGAL CONSIDERATIONS

### INTERAGENCY AGREEMENTS & MOUs

### COORDINATION WITH OTHERS

#### Other DTSC Units:

#### Environmental/Legislative/Industry Groups:

Other Agencies:

Special Requests:

## STEP-BY-STEP PROCEDURES

Flow Charts:

Checklists:

## TECHNICAL REFERENCES

## EXAMPLES OF COMPLETED WORK PRODUCTS

## TIMELINE AND PLANNING

Permit Processing Chart:

Workload Standards:

Statutory & Other Deadlines:

WP File Name: 2/CH1000\_P.MAN

List of Examples:

List of Appendices:

[10.0-1 Mock-up of NOD that would be generated from the DTSC Information System.](#)

List of References:

Attachment 10.0-1

MOCK-UP OF NOTICE OF DEFICIENCY TO BE PREPARED  
FROM THE DTSC INFORMATION SYSTEM

This attachment needs to be developed.